

**COMMISSION ON STATE MANDATES**

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August 3, 2006

Mr. David Scribner  
Executive Director  
Scribner Consulting Group, Inc.  
3840 Rosin Court, Suite 190  
Sacramento, CA 95834

*And Affected State Agencies and Interested Parties (See Enclosed Mailing List)*

**RE: Proposed Statewide Cost Estimate**

*The Stull Act*, 98-TC-25

Education Code Sections 44660 – 44665 (formerly Ed. Code §§ 13485-13490)

Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

Denair Unified School District and Grant Joint Union High School District, Claimants

Dear Mr. Scribner:

The draft staff analysis and proposed statewide cost estimate for this program are enclosed for your review and comment.

**Written Comments**

Any party or interested person may file written comments on the staff analysis by **August 24, 2006**. Comments filed with the Commission are required to be simultaneously served on the parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) To request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1) of the Commission's regulations.

**Hearing**

This matter is now set for hearing on **October 4, 2006**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. This item will be scheduled for the consent calendar unless any party objects. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Cathy Cruz Jefferson at (916) 323-8218 with questions.

Sincerely,

NANCY PATTON  
Assistant Executive Director

Enclosure

Hearing Date: October 4, 2006  
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**ITEM \_\_\_\_\_**

**DRAFT STAFF ANALYSIS  
PROPOSED STATEWIDE COST ESTIMATE**

Education Code Sections 44660-44665  
(Former Ed. Code, §§ 13485-13490)

Statutes 1983, Chapter 498

Statutes 1999, Chapter 4

*The Stull Act* (98-TC-25)

Denair Unified School District and Grant Joint Union High School District, Claimants

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**EXECUTIVE SUMMARY**

The Executive Summary will be included in the Final Staff Analysis.

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## STAFF ANALYSIS

### Summary of the Mandate

On May 27, 2004, the Commission on State Mandates (Commission) adopted the Statement of Decision for *The Stull Act* test claim, finding that Education Code sections 44660-44665 (formerly Ed. Code, §§ 13485-13490) constitute a new program or higher level of service and impose a state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for specific reimbursable activities related to evaluation and assessment of the performance of “certificated personnel” within each school district, except for those employed in local, discretionary educational programs.

The claimant filed the test claim on March 9, 2001. The Commission adopted the Statement of Decision on March 25, 2004, and the parameters and guidelines on March 30, 2005. Eligible claimants were required to file initial reimbursement claims with the State Controller’s Office (SCO) by April 11, 2006.

### Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

#### A. Certificated Instructional Employees

1. Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives (Ed. Code, § 44662, subd. (b), as amended by Stats. 1983, ch. 498.). (*Reimbursement period begins July 1, 1997.*)

Reimbursement for this activity is limited to:

- a. reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and
- b. including in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:
  - once each year for probationary certificated employees;
  - every other year for permanent certificated employees; and
  - beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

*Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated instructional employees.*

2. Evaluate and assess the performance of certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 as it reasonably relates to the progress of pupils towards the state adopted academic content

standards as measured by state adopted assessment tests (Ed. Code, § 44662, subd. (b), as amended by Stats. 1999, ch. 4.). (*Reimbursement period begins March 15, 1999.*)

Reimbursement for this activity is limited to:

- a. reviewing the results of the Standardized Testing and Reporting test as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and
- b. including in the written evaluation of those certificated employees the assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach during the evaluation periods specified in Education Code section 44664, and described below:
  - once each year for probationary certificated employees;
  - every other year for permanent certificated employees; and
  - beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

#### B. Certificated (Instructional and Non-Instructional) Employees

1. Evaluate and assess permanent certificated, instructional and non-instructional, employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation in the years in which the permanent certificated employee would not have otherwise been evaluated pursuant to Education Code section 44664 (i.e., every other year). The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the school district (Ed. Code, § 44664, as amended by Stats. 1983, ch. 498). (*Reimbursement period begins July 1, 1997.*)

This additional evaluation and assessment of the permanent certificated employee requires the school district to perform the following activities:

- a. evaluating and assessing the certificated employee performance as it reasonably relates to the following criteria: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel (Ed. Code, § 44662, subds. (b) and (c));

- b. reducing the evaluation and assessment to writing (Ed. Code, § 44663, subd. (a)). The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the employee in writing of that fact and describe the unsatisfactory performance (Ed. Code, § 44664, subd. (b));
- c. transmitting a copy of the written evaluation to the certificated employee (Ed. Code, § 44663, subd. (a));
- d. attaching any written reaction or response to the evaluation by the certificated employee to the employee's personnel file (Ed. Code, § 44663, subd. (a)); and
- e. conducting a meeting with the certificated employee to discuss the evaluation (Ed. Code, § 44553, subd. (a)).

*Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional, employees.*

### C. Training

- 1. Train staff on implementing the reimbursable activities listed in Section IV of these parameters and guidelines. (One-time activity for each employee.) (*Reimbursement period begins July 1, 1997.*)

### Statewide Cost Estimate

Staff reviewed the claims data submitted by the claimants and compiled by the SCO. The actual claims data showed that about 489 school districts filed 3,243 claims between fiscal years 1997-1998 and 2004-2005, for a total of over \$104.3 million. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program. If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

#### Assumptions

Staff made the following assumptions:

- 1. *The actual claiming data is unaudited and may be inaccurate.* The 3,243 actual claims filed by about 489 school districts for 1997-1998 through 2004-2005 are unaudited, and therefore, may be inaccurate.<sup>1</sup>

Staff reviewed a random sample of claims that were filed by 10 school districts: three are located in northern California, another three in central California, and the remaining four in southern California. This is not a statistical scientific sample. Based on total enrollment, staff reviewed claims filed by a small, medium, and large school district within each region. The districts and their claimed amounts are shown in Table 1.

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<sup>1</sup> Claims data reported as of July 5, 2006.

**TABLE 1. SAMPLED SCHOOL DISTRICTS:  
CLAIMED AMOUNTS BY FISCAL YEAR**

District	# of Teachers <sup>2</sup>	Total Enrollment <sup>3</sup>	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	Totals
<b>Small Districts</b>											
Mt. Shasta Union Elementary (Siskiyou County)	50	887	-	-	-	-	-	4,272	2,198	3,351	\$ 9,821
Aromas/San Juan Unified (San Benito County)	73	1,286	3,471	10,808	10,612	13,784	10,202	20,955	23,346	16,331	\$ 109,509
Imperial Unified (Imperial County)	141	2,956	-	-	-	10,480	9,480	11,025	10,656	11,787	\$ 53,428
<b>Medium Districts</b>											
Grant Joint Union High (Sacramento County)	624	13,558	11,619	9,367	10,247	12,408	18,066	7,356	34,452	28,299	\$ 131,814
Alum Rock Union Elementary (Santa Clara County)	710	13,604	15,449	29,536	31,218	49,291	41,191	46,382	55,495	69,220	\$ 337,782
Panama Buena Vista Union Elementary (Kern County)	746	14,722	34,663	38,993	43,218	33,191	27,846	37,891	29,960	40,710	\$ 286,472
<b>Large Districts</b>											
Elk Grove Unified (Sacramento County)	2,923	58,670	184,590	321,954	463,077	348,877	302,215	424,686	381,205	348,324	\$ 2,774,928
Fresno Unified (Fresno County)	4,040	80,760	29,327	48,151	50,272	74,614	84,162	86,085	86,349	95,168	\$ 554,128
Los Angeles Unified (Los Angeles County)	35,807	741,367	694,381	773,788	852,553	804,351	957,129	1,028,494	984,087	1,136,269	\$ 7,231,052
San Diego Unified (San Diego County)	7,421	134,709	\$762,086	\$855,783	\$972,579	\$949,524	\$983,001	\$875,159	\$760,328	\$924,261	\$ 7,082,721

# of teachers in sample	50,191
Total # of teachers in California	306,548
% teachers represented in sample	16.4%

<sup>2</sup> For 2004-2005, based on data from the California Department of Education's DataQuest. < <http://data1.cde.ca.gov/dataquest/> >

<sup>3</sup> For 2004-2005, based on data from the California Department of Education's DataQuest. < <http://data1.cde.ca.gov/dataquest/> >

**TABLE 2. COST OF PER TEACHER EVALUATION**

District	97/98		98/99		99/00		00/01		01/02		02/03		03/04		04/05	
	# Eval	Cost/ Eval <sup>4</sup>	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval
<b>Small Districts</b>																
Mt. Shasta Union Elementary (Siskiyou County)	-	-	-	-	-	-	-	-	-	-	18	\$237	9	\$244	13	\$258
Aromas/San Juan Unified (San Benito County)	9	\$386	27	\$400	24	\$442	23	\$599	16	\$638	35	\$599	36	\$649	24	\$680
Imperial Unified (Imperial County)	-	-	-	-	-	-	89	\$118	74	\$128	80	\$138	84	\$127	85	\$139
<b>Medium Districts</b>																
Grant Joint Union High (Sacramento County)	79	\$148	69	\$135	92	\$111	101	\$123	121	\$149	101	\$73	125	\$276	123	\$230
Alum Rock Union Elementary (Santa Clara County)	177	\$87	307	\$96	292	\$107	376	\$131	340	\$121	337	\$138	414	\$134	387	\$179
Panama Buena Vista Union Elementary (Kern County)	812	\$43	868	\$45	664	\$65	462	\$72	370	\$75	487	\$78	374	\$80	522	\$78
<b>Large Districts</b>																
Elk Grove Unified (Sacramento County)	809	\$228	995	\$324	882	\$525	877	\$398	899	\$336	1,069	\$397	1,030	\$370	896	\$389
Fresno Unified (Fresno County)	791	\$37	745	\$65	901	\$56	946	\$79	941	\$89	1,037	\$83	746	\$116	1,079	\$88
Los Angeles Unified (Los Angeles County)	13,646	\$51	14,896	\$52	15,881	\$54	15,453	\$52	16,166	\$59	17,904	\$57	16,167	\$61	18,346	\$62
San Diego Unified (San Diego County)	3,321	\$226	3,592	\$238	3,552	\$274	3,206	\$296	3,546	\$277	3,219	\$272	2,920	\$260	3,212	\$288

<sup>4</sup> Derived by dividing the total amount claimed (Table 1) by the number of teachers evaluated during the fiscal year.



Staff notes the following:

- The costs claimed do not appear to have any relationship to the number of teachers evaluated, as shown in Table 2. Various claimant representatives have indicated that a number of other factors must be considered in addition to the number of teachers evaluated. Some of the other factors mentioned include time spent in evaluation, the position and salary of the evaluator, and the way each district conducts evaluations. Some representatives stated that there was a lot of work involved but not enough time to capture costs for other activities. Therefore, costs claimed in one fiscal year varied from a few thousand dollars to over \$1 million, regardless of the number of teachers evaluated. This amounts to a few dollars to hundreds of dollars per teacher evaluation.
- The Los Angeles Unified School claimed equal amounts for the following activities under IV.A.1. of the parameters and guidelines: “a) reviewing the employee’s instructional techniques and strategies and adherence to curricular objectives, and b) including in the written evaluation of the certificated instructional employees the assessment of these factors during the [certain] evaluation periods....” Staff notes that the performance of these activities should be concurrent.

Staff contacted a representative of the Los Angeles Unified School District to discuss the issue and the representative explained that the district used a conservative time estimate of 30 minutes to review the techniques and strategies, and another 30 minutes to include an assessment of the factors in the written evaluation. The district then multiplied the unit time by the salary of an assistant principal. The representative noted that the district was in the process of conducting a time study and the district intends to submit amended claims showing significantly higher costs.

- The adopted parameters and guidelines for *The Stull Act* program noted the following in the Reimbursable Activities section:

*For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional, employees.*

The claims reviewed did not identify the state or federal law(s) mandating the educational program(s) being performed, and thus, staff could not verify whether these programs were mandated.

- The Commission found that training staff on implementing the reimbursable activities listed in Section IV of the parameters and guidelines is reimbursable. However, staff notes that the claiming forms lack a reimbursable component box for training, making costs for training unclear. At least three claimant representatives indicated that training costs were minimal and were claimed under a different component.

Therefore, based on the foregoing observations, staff finds that the actual, unaudited claims only represent an estimated cost of the program for fiscal years 1997-1998 through 2004-2005.

2. *Costs will vary over time.* Under this program, probationary teachers are evaluated once a year while permanent teachers are evaluated once every two years. Therefore, costs may increase over time as experienced teachers retire and new teachers are hired. On the other hand, costs may also decrease over time because the number of teachers retained by school districts may decline as enrollment declines.

3. *The actual amount claimed will increase when late or amended claims are filed.*  
Less than 500 eligible school districts in California have filed reimbursement claims for this program. At least three of the top fifteen school districts have not filed claims, including Santa Ana Unified, Capistrano Unified, and Riverside Unified. Also, a representative of the Los Angeles Unified School District stated that the district would be amending its claims to show higher costs. Thus, if reimbursement claims are filed by any of the remaining districts and the Los Angeles Unified School District, the amount of reimbursement claims may exceed the statewide cost estimate. For this program, late claims may be filed until April 2007.
4. *The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.

### Methodology

#### *Fiscal Years 1997-1998 through 2004-2005*

The proposed statewide cost estimate for fiscal years 1997-1998 through 2004-2005 is based on the 3,243 actual reimbursement claims filed with the SCO for these years. However, staff notes that the claims are unaudited and may be inaccurate for the reasons stated above.

#### *Fiscal Years 2005-2006 and 2006-2007*

Staff estimated fiscal year 2005-2006 costs by multiplying the 2004-2005 estimate by the implicit price deflator for 2004-2005 (3.5%), as forecast by the Department of Finance. Staff estimated fiscal year 2006-2007 costs by multiplying the 2005-2006 estimate by the implicit price deflator for 2005-2006 (3.1%).

The proposed statewide cost estimate includes 10 fiscal years for a total of \$145,105,098. This averages to \$14,510,510 annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

**TABLE 3. BREAKDOWN OF ESTIMATED TOTAL COSTS PER FISCAL YEAR**

<b>Fiscal Year</b>	<b># of Claims Filed w/ SCO</b>	<b>Estimated Cost</b>
1997-1998	302	\$ 6,862,744
1998-1999	340	8,117,831
1999-2000	362	10,542,227
2000-2001	396	12,384,945
2001-2002	423	14,912,816
2002-2003	457	15,696,569
2003-2004	474	16,407,883
2004-2005	489	19,399,882
2005-2006 (estimated)	N/A	20,078,878
2006-2007 (estimated)	N/A	20,701,323
<b>TOTAL</b>	<b>3,243</b>	<b>\$ 145,105,098</b>

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$145,105,098** or costs incurred in complying with *The Stull Act* program.